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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

19 **IN RE CAPACITORS ANTITRUST**
20 **LITIGATION**

Case Nos. 14-cv-04657, 14-cv-04677

Master File No.: 14-cv-03264-JD

21 **THIS DOCUMENT RELATES TO:**
22 **FIRST-LEVEL INDIRECT PURCHASER**
23 **ACTIONS**

NOTICE OF MOTION AND MOTION OF
PLAINTIFFS TOY-KNOWLOGY INC.
AND CAE SOUND TO APPOINT INTERIM
CO-LEAD CLASS COUNSEL FOR THE
PROPOSED FIRST-LEVEL INDIRECT
PURCHASER CLASS; MEMORANDUM
OF POINTS AND AUTHORITIES

Date: October 29, 2014
Time: 9:30 a.m.
Judge: James Donato
Courtroom: 11

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on October 29, 2014, at 9:30 a.m., or as soon thereafter as this matter may be heard before the Honorable James Donato of the United States District Court, Northern District of California, Courtroom 9, 19th Floor, 450 Golden Gate Avenue, San Francisco, California, Plaintiffs Toy-Knowlogy Inc. and CAE Sound will and hereby do move the Court for an order appointing the law firms of **Cotchett, Pitre & McCarthy, LLP** and **Lieff Cabraser Heimann & Bernstein, LLP** as co-lead counsel and interim class counsel (together, “Interim Co-Lead Class Counsel”) for the proposed First-Level Indirect Purchaser Class in *Toy-Knowlogy Inc. v. Elna Co., Ltd., et al., CAE Sound v. Elna Co., Ltd., et al.*, and other First-Level Indirect Purchaser actions to be filed. Plaintiffs Toy-Knowlogy Inc.’s and CAE Sound’s counsel herein recommends that, after the Court appoints Interim Co-Lead Class Counsel, the Court allow appointed Interim Co-Lead Class Counsel to recommend to the Court a Plaintiffs’ Steering Committee. This will allow this case to proceed in an efficient manner.

This motion is brought pursuant to Rule 23(g)(1) and (3) of the Federal Rules of Civil Procedure. The grounds for this motion are that this complex antitrust action will benefit from the appointment of experienced antitrust trial lawyers who will take personal responsibility for leading and directing this litigation. The proposed Interim Co-Lead Class Counsel are well-qualified for the position due to their extensive experience in antitrust class action litigation and trial experience, including leadership roles in virtually every major antitrust class action in the Northern District of California in the last twelve years, including *In re Dynamic Random Access Memory Antitrust Litig.*, Case No. M:02-cv-01486-PHJ (N.D. Cal.), *In re Static Random Access Memory Antitrust Litig.*, Case No. 4:07-md-01819-CW (N.D. Cal.), *In re Cathode Ray Tube Antitrust Litig.*, Case No. 3:07-cv-05944-SC (N.D. Cal.), *In re Optical Disk Drive Antitrust Litig.*, Case No. 3:10-md-02143-RS (N.D. Cal.), *In re Flash Memory Antitrust Litig.*, Case No. 4:07-cv-00086-SBA (N.D. Cal.), *In re TFT-LCD (Flat Panel) Antitrust Litig.*, Case No. 3:07-md-01827-SI (N.D. Cal.), and *In re Lithium Ion Batteries Antitrust Litig.*, Case No. 4:13-md-2420-YGR (N.D. Cal.). In addition to

these cases, proposed Interim Co-Lead Counsel have also been appointed to lead major antitrust class actions in federal courts throughout the country. As Interim Co-Lead Class Counsel, these firms will organize and build relationships with the other plaintiffs' counsel, which bring significant antitrust experience and a dedication to actively prosecute this case. Proposed Interim Co-Lead Class Counsel will ensure that work is performed efficiently.

This Motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Declaration of Steven N. Williams, the Declaration of Eric B. Fastiff, all records on file with this Court, and such other written and/or oral argument as may be presented to the Court.

Dated: October 23, 2014

Respectfully submitted,

/s/ Steven N. Williams

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. PROCEDURAL AND FACTUAL BACKGROUND.....	3
A. Aluminum and Tantalum Electrolytic Capacitors	3
B. Consolidation of Cases	4
C. First-Level Indirect Purchaser Class	4
III. THE COURT SHOULD APPOINT CPM AND LIEFF CABRASER AS INTERIM CO-LEAD CLASS COUNSEL	5
A. Moving Counsel Thoroughly Investigated the Misconduct Alleged in this Action (Fed. R. Civ. P. 23(g)(1)(A)(i)).....	7
B. Moving Counsel Has Extensive Experience in Complex Electronic Component Antitrust Class Actions (Fed. R. Civ. P. 23(g)(1)(A)(ii))	7
1. Moving Counsel’s Substantial Experience in Prior Electronic Component Price-Fixing Cases Guided Their Investigation	7
2. CPM and Lieff Cabraser Have Substantial Experience in Litigating and Trying Class Actions and Complex Cases	9
a. CPM and its Attorneys Handle Complex Litigation Efficiently and Effectively	9
b. Lieff Cabraser Has the Experience Necessary to Serve as Interim Co-Lead Class Counsel and Has Extensive Knowledge About the Applicable Law	10
c. CPM and Lieff Cabraser Regularly Take Cases to Trial	12
C. CPM and Lieff Cabraser Have Substantial Experience in Antitrust Law, Particularly Within this District (Fed. R. Civ. P. 23(g)(1)(A)(iii)).....	13
D. CPM and Lieff Cabraser Will Continue to Commit More Than Ample Resources to Represent the First-Level Indirect Purchaser Plaintiffs (Fed. R. Civ. P. 23(g)(1)(A)(iv)).....	14
E. Appointment of Lead Counsel Based in this District Serves the Best Interests of the Class.....	15
IV. CONCLUSION.....	16

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Coleman v. Gen. Motors Acceptance Corp.</i> , 220 F.R.D. 64 (M.D. Tenn. 2004)	5
<i>Millman v. Brinkley</i> , 2004 U.S. Dist. LEXIS 20113 (N.D. Ga. Oct. 1, 2004).....	7
<i>Paraggua v. LinkedIn Corp.</i> , 2012 U.S. Dist. LEXIS 123226 (N.D. Cal. Aug. 29, 2012).....	5
<i>Sullivan v. DB Investments</i> , 667 F.3d 273 (3d Cir. 2011).....	13
<i>White v. TransUnion, LLC</i> , 239 F.R.D. 681 (C.D. Cal. 2006)	5

Rules**Federal Rules of Civil Procedure**

Rule 23(g)	4, 5
Rule 23(g)(3).....	5
Rule 23(g)(1)(A)(i)	6
Rule 23(g)(1)(A)(i)-(iv)	6, 14

Other Authorities

Herbert B. Newberg & Alba Conte, <i>Newberg on Class Actions</i> § 9.35 (4th ed. 2002)	7
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1 **STATEMENT OF ISSUES TO BE DECIDED**

2 Should the Court appoint Cotchett, Pitre & McCarthy, LLP (“CPM”) and Lieff Cabraser
3 Heimann & Bernstein, LLP (“Lieff Cabraser”) (collectively, “Moving Counsel”) as Interim Co-
4 Lead Class Counsel for the proposed First-Level Indirect Purchaser Class.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 While the criteria for selection of interim lead counsel in class actions are set forth and
8 addressed at greater length below, perhaps the most important consideration of the Court in
9 deciding on interim lead counsel is determining who is prepared and most capable of organizing
10 and trying the case on behalf of the class. Judge Yvonne Gonzales Rogers chose CPM and Lieff
11 Cabraser¹ as Interim Co-Lead Class Counsel for the proposed indirect purchaser class in *In re*
12 *Lithium Ion Batteries Antitrust Litig.* (“*Batteries*”), MDL No. 2420, Case No. 13-MD-2420-YGR
13 (N.D. Cal.), for this very reason. While there are many fine firms involved in this action, it is
14 respectfully suggested that the ability to organize and try cases efficiently on behalf of the
15 proposed class is paramount, and that CPM and Lieff Cabraser are most qualified to prosecute
16 and try this case on behalf of the proposed class, given the firms’ experience and the locale of the
17 litigation.

18 *Toy-Knowlogy Inc. v. Elna Co., Ltd.* and *CAE Sound v. Elna Co., Ltd.* concern an alleged
19 conspiracy to fix, raise, maintain, and/or stabilize prices for aluminum and tantalum electrolytic
20 capacitors. Counsel for both cases unanimously support CPM and Lieff Cabraser as Interim Co-
21 Lead Class Counsel for the proposed First-Level Indirect Purchaser Class.

22 Both local firms bring extensive trial and leadership qualities to the case. For example,
23 Lieff Cabraser recently served as co-lead class counsel for the direct purchaser plaintiff class in *In*
24 *re TFT-LCD (Flat Panel)* (“*LCD*”), Case No. M 07-1827 SI (N.D. Cal.) (Illston, J.). After
25 reaching settlements with almost all defendants for over \$400 million, Partner Richard Heimann
26 tried a six-week jury trial against the remaining defendant and obtained a \$261 million verdict

27 ¹ Along with Hagens Berman Sobol Shapiro LLP.

1 after trebling. Lief Cabraser also served as co-lead class counsel for a direct purchaser plaintiff
 2 class in *In re Titanium Dioxide Antitrust Litig.* (“*Titanium Dioxide*”) (D. Md.), Case No. 10-cv-
 3 00318(RDB), which settled on the eve of trial for a total of \$165 million. Additionally, Lief
 4 Cabraser serves as co-lead class counsel for the anti-solicitation antitrust case, *In re High-Tech*
 5 *Employee Antitrust Litig.* (“*High-Tech*”), Case No. 11-cv-2509-LHK (N.D. Cal.), which is set for
 6 trial on April 9, 2015.

7 Joseph W. Cotchett of CPM is universally recognized as one of the foremost trial lawyers
 8 and strategists in the country, and has been personally involved in the related electronics antitrust
 9 cases in this District including *In re Dynamic Random Access Memory* (“*DRAM*”), Case No. M
 10 02-1486 PJH (Hamilton, J.); *In re Static Random Access Memory* (“*SRAM*”), Case No. M 07-
 11 1819 CW (Wilken, J.); *In re Flash Memory* (“*Flash*”), Case No. C 07-0086 SBA (Armstrong, J.);
 12 *In re Cathode Ray Tube* (“*CRT*”), Case No. 07-5944 SC (Conti, J.); *In re Optical Disk Drive*
 13 (“*ODD*”), Case No. M 10-2143 RS (Seeborg, J.); and *Batteries*.² Among Mr. Cotchett’s many
 14 honors was his selection as Antitrust Lawyer of the Year by the California State Bar in 2011.
 15 Judge Wilken appointed CPM lead counsel in *SRAM* which resulted in \$75 million in settlements,
 16 the last of which was reached on the afternoon before trial was to begin—all in a case in which
 17 the U.S. Department of Justice (“DOJ”) Antitrust Division never filed charges against the
 18 Defendants.

19 CPM and Lief Cabraser have long been preeminent plaintiffs’ trial firms in antitrust
 20 litigation. Both were founded in and are based in this District, although their practices now
 21 expand throughout the country. CPM and Lief Cabraser can operate efficiently since their
 22 offices are in the District and are uniquely qualified to represent the First-Level Indirect
 23 Purchasers of capacitors as Interim Co-Lead Class Counsel. CPM and Lief Cabraser have
 24 successfully *tried to verdict over a dozen antitrust cases*. CPM and Lief Cabraser, together,
 25 have been leaders in every recent antitrust case concerning the price-fixing of electronic

26
 27 ² CPM withdrew from *LCD* to avoid any appearance of conflict given that the Hon. Susan Illston,
 28 formerly a name partner of CPM, presided over that case.

1 components and consumer electronic goods. They will use that experience to provide the best
2 representation to the First-Level Indirect Purchaser plaintiffs.

3 This Motion does not name any members of the Plaintiffs' Steering Committee ("PSC")
4 other than these firms as Interim Co-Lead Class Counsel. Moving Counsel intend to discuss with
5 the Court the PSC's size and membership at the October 29, 2014 conference. Then, once the
6 Court appoints Interim Co-Lead Class Counsel, Moving Counsel will review the applications and
7 make a recommendation to the Court. Moving Counsel respectfully suggests that the PSC should
8 be responsible for plaintiff discovery, defendant discovery, third-party discovery, and expert
9 discovery. The PSC should be staffed and organized along these lines to promote efficiency.

10 **II. PROCEDURAL AND FACTUAL BACKGROUND**

11 **A. Aluminum and Tantalum Electrolytic Capacitors**

12 This action involves a multi-year conspiracy by Defendants to inflate, fix, raise, maintain,
13 or artificially stabilize prices of aluminum and tantalum electrolytic capacitors. Capacitors are
14 ubiquitous electronic components and are essential to a wide array of electronic devices.
15 Defendants collectively control a majority of the global market for aluminum and tantalum
16 electrolytic capacitors and sell billions of dollars' worth of these capacitors each year.

17 Competition authorities in the United States, China, Japan, Korea, Singapore, Taiwan, and
18 the European Union are currently investigating a conspiracy in the market for capacitors. The
19 investigation of the worldwide capacitor industry began after United States and Chinese
20 regulators were approached by Panasonic Corporation, which is believed to be an "amnesty plus"
21 applicant in connection with the unrelated investigation into the international automotive parts
22 industry. Scrutiny of the global capacitors industry was first brought to public attention following
23 the March 2014 raid of two Japanese capacitor manufacturers by the Chinese authorities. On
24 June 9, 2014, the DOJ's Antitrust Division confirmed that it was investigating capacitor
25 manufacturers. It is believed that the DOJ's investigation originates out of its San Francisco Field
26 Office, and that a grand jury has been empaneled in the Northern District of California to
27 investigate the global capacitor industry. Since the March 2014 raids, other competition

1 authorities have also raided capacitor manufacturers.

2 **B. Consolidation of Cases**

3 On October 2, 2014, the Honorable James Donato issued a Consolidation and Case
4 Management Order consolidating Case Nos. 3:14-cv-03264-JD, 3:14-cv-03300-JD, 3:14-cv-
5 03698-JD, 3:14-cv-03815-JD, and 3:14-cv-04123-JD into *In re Capacitors Antitrust Litig.*,
6 Master File No. 14-3264, for all pretrial proceedings (ECF No. 133, paras. 1-2). These cases
7 concern an alleged conspiracy to fix, raise, maintain, and/or stabilize prices for aluminum and
8 tantalum electrolytic capacitors. The Order also provides, “If a related action is subsequently
9 filed in or transferred to this District, it will be consolidated into this action for all pretrial
10 purposes. This order will apply to every such related action, without a further order of the Court”
11 (*Id.* at para. 3). The Order also notes that Direct Purchaser Plaintiffs’ and Consumer Indirect
12 Purchaser Plaintiffs’ motions to appoint interim class counsel pursuant to Fed. R. Civ. P. 23(g)
13 have already been noticed for October 29, 2014 at 9:30 a.m., and a case management conference
14 will follow a hearing on those motions (*Id.* at para. 10).

15 **C. First-Level Indirect Purchaser Class**

16 Moving Counsel seek to represent a proposed class of First-Level Indirect Purchasers
17 defined as all persons and entities who, between January 1, 2005 and the present, directly
18 purchased aluminum and/or tantalum capacitors in the United States from a capacitor distributor.
19 These First-Level Indirect Purchasers differ from the consumer indirect purchaser plaintiffs who
20 are the subject of the *Everett Ellis* Complaint, Case No. 3:14-cv-03815, because First-Level
21 Indirect Purchasers purchased capacitors directly from a capacitor distributor, placing First-Level
22 Indirect Purchasers at the next level in the capacitor distribution chain from the direct purchaser
23 plaintiffs who are the subject of the *Chip-Tech* Complaint, Case No. 3:14-cv-03264, and other
24 putative Direct Purchaser Complaints.

25 There is no overlap between the proposed First-Level Indirect Purchaser class, at issue in
26 the instant motion, and the proposed Consumer Indirect Purchaser class, at issue in the pending
27 motion for appointment of lead counsel in *Ellis*, No. 3:14-cv-03815 (ECF No. 34). The First-

Level Indirect Purchaser class includes persons and entities who “directly purchased aluminum and/or tantalum capacitors in the United States from a capacitor distributor.” (Case No. 14-cv-04657; ECF No. 1 at ¶ 233.) That is, First-Level Indirect Purchasers made direct purchases of raw capacitors from distributors. The Consumer Indirect Purchaser class at issue in *Ellis* includes, instead, purchases of “*electronic products*, including automobiles, containing aluminum or tantalum capacitors manufactured by the Defendants or any current subsidiary, affiliate thereof or coconspirator.” (No. 14-cv-03815; ECF No. 1 at ¶ 226; emphasis added.) Thus, the *Ellis* plaintiffs have defined a putative indirect purchaser class of component parts purchasers, not a proposed class of purchasers of capacitors as set forth in the *Toy-Knowlogy Inc.* and *CAE Sound* complaints. The two actions concern different levels of distribution, and different type of purchases (raw capacitors versus electronic products which may include capacitors as components).

Moving Counsel take no position on Consumer Indirect Purchaser Plaintiff Ellis’ Unopposed Motion for Appointment of as Rule 23(g) Interim Class Counsel (N.D. Cal. Sept. 24, 2014), ECF No. 34, except insofar as Plaintiff Ellis and his counsel seek to represent First-Level Indirect Purchasers (which are not included in their proposed class definition). The interests of the two proposed classes, concerning purchases at different levels of distribution and different types of products, are in conflict (*e.g.*, extent of overcharges passed-through different levels of distribution), and the proposed classes should be represented by separate counsel.

III. THE COURT SHOULD APPOINT CPM AND LIEFF CABRASER AS INTERIM CO-LEAD CLASS COUNSEL

Federal Rule of Civil Procedure 23(g) permits a court to “designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). “Instances in which interim class counsel is appointed are those in which overlapping, duplicative, or competing class suits are pending before a court, so that appointment of interim counsel is necessary to protect the interests of class members.” *Paraggua v. LinkedIn Corp.*, No. C 12-3088 EJD, 2012 U.S. Dist. LEXIS 123226, at *5-6 (N.D.

Cal. Aug. 29, 2012) (Davila, J.) (quoting *White v. TransUnion, LLC*, 239 F.R.D. 681, 683 (C.D. Cal. 2006)). In considering a motion to appoint interim co-lead class counsel, a court must determine who will best represent the interests of the class, and who is best able to accomplish the class action goals of efficiency and economy in doing so. See *Coleman v. Gen. Motors Acceptance Corp.*, 220 F.R.D. 64, 100 (M.D. Tenn. 2004).

Rule 23(g) sets forth four considerations for the appointment of lead class counsel:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel's experience in handling class actions, other complex litigation and the types of claims asserted in the action;
- (iii) counsel's knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv). No single factor is determinative; all factors must be weighed to determine who can best represent the class. Advisory Committee Notes (2003 Amendments).

As provided below, each criterion supports the appointment of the proposed leadership structure, with CPM and Lieff Cabraser serving as Interim Co-Lead Class Counsel. CPM and Lieff Cabraser have forty-plus-year histories of litigating and trying complex cases in courts throughout the United States. The firms have taken hundreds of cases to trial, and the attorneys in each firm are widely recognized for their trial experience. Both firms have served as lead counsel in direct purchaser antitrust class actions brought pursuant to the Sherman Act and in indirect purchaser antitrust class actions brought pursuant to the Sherman Act and various state antitrust statutes. CPM and Lieff Cabraser attorneys have extensive experience from the prior electronic component price-fixing cases described above that involve many of the same defendants and many of the same defense counsel in this case. Both firms have reviewed these defendants' documents, taken depositions of defendants' witnesses, and examined them at trial. First-Level Indirect Purchasers will benefit from these firms' appointment as Interim Co-Lead Class Counsel.

1 **A. Moving Counsel Thoroughly Investigated the Misconduct Alleged in this**
 2 **Action (Fed. R. Civ. P. 23(g)(1)(A)(i))**

3 Before filing, Moving Counsel comprehensively researched the misconduct giving rise to
 4 first-level purchaser plaintiffs' claims, the nature of the capacitors industry, and the injury and
 5 damages Defendants' alleged conduct caused. In spring 2014, before the DOJ investigation was
 6 publicly disclosed, CPM and Lieff Cabraser received confidential information concerning the
 7 Capacitors investigation and began their own investigation of the capacitors industry. CPM
 8 engaged an investigator to study the industry, Williams Decl. ¶ 5, and spoke with numerous
 9 people with knowledge of the investigation. Lieff Cabraser consulted with an economic
 10 consultant, an industry consultant, and its own internal investigator to study the industry. Fastiff
 11 Decl. ¶ 14. The firms filed complaints reflecting their investigations and economists' work.

12 Moving Counsel have devoted substantial resources—both in time and money—to
 13 investigate the allegations in the complaints, and will devote all necessary resources going
 14 forward to achieve a successful resolution.

15 **B. Moving Counsel Has Extensive Experience in Complex Electronic Component**
 16 **Antitrust Class Actions (Fed. R. Civ. P. 23(g)(1)(A)(ii))**

17 In selecting lead counsel, “the ‘guiding principle’ is who will ‘best serve the interest of the
 18 plaintiffs. The criteria for selecting counsel include factors such as experience and prior success
 19 record, the number, size, and extent of involvement of represented litigants, the advanced stage of
 20 the proceedings in a particular suit, and the nature of the causes of action alleged.” *Millman v.*
 21 *Brinkley*, No. 1:03-cv-3831-WSD, 2004 U.S. Dist. LEXIS 20113, at *9 (N.D. Ga. Oct. 1, 2004)
 22 (quoting Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 9.35 at 388 (4th ed.
 23 2002)). Each of these factors weighs in favor of approving the proposed leadership structure with
 24 CPM and Lieff Cabraser serving as Interim Co-Lead Class Counsel.

25 **1. Moving Counsel's Substantial Experience in Prior Electronic**
 26 **Component Price-Fixing Cases Guided Their Investigation**

27 Over the past decade, many electronic component price-fixing cases have been litigated
 28 and tried in this District. In addition to *SRAM* and *LCD*, described above, the Northern District

1 has been the venue for the following electronic component price-fixing cases, some of which
 2 remain ongoing: *DRAM*, *Flash*, *CRT*, *ODD*, and *Batteries*.

3 Between them, CPM and Lieff Cabraser have played important roles in each of these
 4 cases. As lead counsel in *SRAM*, CPM was able to obtain over \$77 million in settlements, the last
 5 of which was reached on the afternoon before trial was to begin—all in a case in which the DOJ
 6 did not even file charges against the defendants. The successful prosecution of *SRAM* was
 7 accomplished solely through the efforts of the private plaintiffs' firms, led by CPM. CPM was
 8 also the co-chair of the Discovery Committee in *DRAM*, co-lead counsel for the indirect purchaser
 9 class in *Flash*, co-lead counsel for the indirect purchaser class in *Batteries*, and member of the
 10 executive committee in *CRT* and *ODDs*. In these leadership positions, CPM has successfully
 11 recovered over multi-millions for injured consumer class members.

12 For its part, as co-lead counsel in *LCD*, Lieff Cabraser obtained a total of over \$470
 13 million in settlements from defendants, managed voluminous discovery, including approximately
 14 eight million documents, comprising 110 million pages, in four languages, and over 130
 15 depositions. After a six-week trial against one defendant, the jury awarded plaintiffs \$261
 16 million, following statutory trebling. Additionally, Lieff Cabraser served as a member of the
 17 indirect purchaser plaintiffs' steering committee in *SRAM*. Lieff Cabraser has also served as
 18 counsel in *Flash*, *CRT*, and *ODDs*.

19 CPM's and Lieff Cabraser's experience in other electronic component price-fixing cases,
 20 all of which involved some of defendants here, will benefit First-Level Indirect Purchaser
 21 plaintiffs and the prosecution of this case. For example, many defendants are based in Asia,
 22 resulting in a significant amount of foreign-language discovery. Over the past decade, CPM and
 23 Lieff Cabraser have amassed significant experience handling such discovery. Indeed, the specific
 24 methods and means of communication in which such conspiracies occur are unique to the
 25 electronic components industry. CPM and Lieff Cabraser have reviewed millions of pages of
 26 documents and have deposed and questioned hundreds of employees of these defendants over the
 27 years, making these firms uniquely well-suited to serve as Interim Co-Lead Class Counsel.

1 Separate from CPM's and Lieff Cabraser's knowledge about defendants, their business
 2 practices, and managing discovery from them, both firms have developed extensive relationships
 3 with consultants, experts, and foreign language translators and interpreters. Further, CPM and
 4 Lieff Cabraser have relationships of respect and trust with many of defendants' counsel. By
 5 building these relationships, CPM and Lieff Cabraser have laid a solid foundation for a working
 6 relationship with counsel for the defendants. CPM's and Lieff Cabraser's relationships will allow
 7 them to prosecute this litigation vigorously, efficiently, and in a manner consistent with best
 8 practices.

9 **2. CPM and Lieff Cabraser Have Substantial Experience in Litigating**
 10 **and Trying Class Actions and Complex Cases**

11 **a. CPM and its Attorneys Handle Complex Litigation**
 12 **Efficiently and Effectively**

13 CPM has been acknowledged for handling cases efficiently and effectively. This is one
 14 reason large institutional investors, such as the California State Teachers' Retirement System and
 15 The Regents of the University of California, have selected CPM as counsel in some of their most
 16 important cases.

17 The *National Law Journal* has reported that the firm and its members are regarded by both
 18 plaintiff and defense attorneys as some of the foremost trial lawyers in the nation. CPM was
 19 named to the *National Law Journal*'s "Litigation Boutiques Hot List" in 2012 and the "Plaintiffs'
 20 Hot List" in 2011. Recently, the *National Law Journal* named CPM to its inaugural list of Elite
 21 Trial Lawyers. The *Daily Journal*, California's leading legal publication, has named CPM one of
 22 the top law firms in Northern California—the only plaintiffs' class action firm so named.
 23 Cotchett's background and qualifications are further set forth in the Declaration of Steven N.
 24 Williams.

25 The attorneys CPM will bring to this litigation include:

26 CPM Partner Joseph W. Cotchett is lead counsel and team supervisor of the CPM
 27 attorneys. As stated by The National Law Journal, Mr. Cotchett is considered by plaintiffs and
 28 defense attorneys alike to be one of the foremost trial lawyers in the country. He was also named

the 2011 Antitrust Lawyer of the Year by the Golden State Antitrust and Unfair Competition Law Institute. He is the author of several books, including *Federal Courtroom Evidence*, *California Courtroom Evidence* and others. He has tried over 100 cases to verdict in the last 42 years in jurisdictions across the country while settling hundreds more.

Cotchett Partner Steven N. Williams has over sixteen years of experience litigating antitrust, securities, and consumer class actions. Mr. Williams serves or has served as lead or co-counsel in several nationwide class actions, including *SRAM; In re Automotive Parts Antitrust Litig.*, 12-MD-02311 (E.D. Mich.); *In re Transpacific Passenger Air Transportation Antitrust Litig.*, Case No. M 06-1793 (N.D. Cal.) (Breyer, J.); *In re International Air Transportation Surcharge Antitrust Litig.*, 06-cv-1793 (N.D. Cal.) (Breyer, J.); and *Kopies, Inc., v. Eastman Kodak Co.*, 94-0524 (N.D. Cal.) (Armstrong, J.). Mr. Williams has also played a leading role in natural gas antitrust litigation in state and federal courts in California.

b. Lieff Cabraser Has the Experience Necessary to Serve as Interim Co-Lead Class Counsel and Has Extensive Knowledge About the Applicable Law

Celebrating its 42nd anniversary in 2014, Lieff Cabraser specializes in class actions and complex litigation. As explained more fully in the firm's resume, Lieff Cabraser enjoys national recognition for its handling of state coordinated and federal multidistrict litigation. Indeed, the firm's experience and talents are recognized by both consumer clients and corporations, such as the Charles Schwab Corporation, which has retained Lieff Cabraser in four cases, including the *LIBOR* antitrust case.

Lieff Cabraser's work is attributable to a team of over sixty attorneys who have experience spanning all levels and various disciplines. To this litigation, Lieff Cabraser will bring a wide spectrum of experienced attorneys, permitting the team to litigate the case in the most efficient, expeditious manner possible. Among the Lieff Cabraser attorneys who will be involved in this action are:

Lieff Cabraser Partner Richard M. Heimann has over 35 years of experience in trial courts in the areas of complex antitrust and securities litigation, including class action litigation. Mr.

1 Heimann has tried over 30 civil jury cases, including four class actions. For his role as lead trial
 2 counsel in *LCD*, *California Lawyer* recognized Mr. Heimann with a 2013 California Lawyer of
 3 the Year award. Mr. Heimann also tried *Gutierrez v. Wells Fargo Bank*, Case No. C 07-05923
 4 WHA (N.D. Cal.), which resulted in a \$203 million bench verdict in favor of the class, and
 5 *Claghorn v. Edsaco Ltd.*, Case No. C 98-3039 SI, which resulted in a jury verdict of \$170.7
 6 million verdict in favor of the class. Mr. Heimann also tried *In re FPI/Agretech Securities Litig.*,
 7 MDL No. 763 (D. Haw.), a class action on behalf of investors where the jury returned a \$25
 8 million verdict.

9 Lief Cabraser Partner Eric B. Fastiff has 17 years of experience in complex antitrust class
 10 actions and is Chair of Lief Cabraser's Antitrust and Intellectual Property Practice Group. Mr.
 11 Fastiff represents The Charles Schwab Corporation in the *LIBOR* antitrust case, represented direct
 12 purchaser plaintiffs in the successful *LCD* case, and spearheaded prosecution of the *De Beers*
 13 indirect purchaser antitrust action for monopolization of the rough diamond trade in the United
 14 States, playing a key role in negotiating and finalizing the \$295 million settlement in the federal
 15 case. Currently, Mr. Fastiff serves as co-lead class counsel and represents California consumers
 16 and third party payors in *Cipro Cases I and II* ("*Cipro*"), JCCP Nos. 4154 and 4220, currently
 17 pending before the California Supreme Court. *Cipro* charges that Bayer Corporation, Barr
 18 Laboratories, and other generic prescription drug manufacturers conspired to restrain competition
 19 in the sale of Bayer's blockbuster antibiotic drug Ciprofloxacin, sold as Cipro. Mr. Fastiff was
 20 instrumental in achieving a \$74 million settlement with Bayer in November 2013.

21 Lief Cabraser Partner Brendan P. Glackin is a dedicated antitrust litigator and an
 22 experienced trial lawyer, having served as a deputy public defender in Contra Costa County
 23 before coming to Lief Cabraser. Most recently, he served as co-lead counsel and trial counsel in
 24 *Titanium Dioxide*, and he played an integral role in *LCD*, serving as the second chair of the Lief
 25 Cabraser trial team. During the *LCD* trial, Mr. Glackin examined the plaintiffs' and the
 26 defendants' economic expert witnesses, including the parties' experts on antitrust injury and
 27 damages. In 2011, Mr. Glackin was one of the principal trial counsel for retailers in *Meijer, Inc.*

1 *v. Abbott Laboratories* (“*Norvir*”), Case No. C 07-5985 CW (N.D. Cal.), achieving a \$52 million
 2 settlement after opening statements and the presentation of four witnesses and evidence to the
 3 jury. Mr. Glackin regularly handles the deposition and examination of economic expert witnesses
 4 in antitrust cases, including recently in *LCD* and *High-Tech*.

5 **c. CPM and Lieff Cabraser Regularly Take Cases to Trial**

6 CPM and Lieff Cabraser work to resolve cases efficiently before trial, if either firm cannot
 7 reach a settlement that is in the best interests of their clients, both firms will proceed to trial.

8 For Lieff Cabraser, *LCD* presented such a scenario. Although the direct purchaser
 9 plaintiffs reached settlements totaling over \$400 million with all but one defendant, they were
 10 unable to agree to favorable terms with Toshiba and accordingly proceeded to trial. As noted
 11 above, after a six-week trial, the jury awarded plaintiffs \$261 million, following statutory trebling.
 12 The National Law Journal recognized this verdict as among the top 10 verdicts for 2012.

13 In another major antitrust case, *Norvir*, the class and the defendant were unable to resolve
 14 the case in advance of trial. Lieff Cabraser again prepared for and proceeded to trial. However,
 15 shortly after opening statements, the parties settled, resulting in a \$52 million recovery for the
 16 class.

17 CPM likewise brings cases to trial. Just in the last few years, CPM has successfully
 18 brought to trial two class action cases. In 2011 in *In re Homestore.com, Inc. Securities Litig.*, 01-
 19 cv-11115 (C.D. Cal.), CPM tried one of only 15 class cases ever tried under the Private Securities
 20 Litigation Reform Act. The jury returned a verdict of \$64,695,945 million on behalf of the class.
 21 In *Massoyan v. HL Leasing, Inc.*, Case No. 09-CECG 01839 (Fresno Cty. Super. Ct.), CPM was
 22 unable to settle a class action on terms acceptable to the class, and in 2011 tried the case to a jury
 23 verdict of \$151.7 million. In addition, in 2013 CPM secured a \$1.15 billion judgment against the
 24 lead paint industry after a two-month trial in Santa Clara Superior Court. The Lead Paint case
 25 was the result of 13 years of litigation, including multiple trips to the California Court of Appeals
 26 and the Supreme Court of California, and stands as the only successful trial against the lead paint
 27 industry for creating a public nuisance threatening the health and well-being of children.

C. CPM and Lieff Cabraser Have Substantial Experience in Antitrust Law, Particularly Within this District (Fed. R. Civ. P. 23(g)(1)(A)(iii))

CPM has a national reputation for excellence and success in complex antitrust litigation. CPM has been at the forefront of antitrust enforcement, successfully leading the prosecution of antitrust cases in markets including consumer electronics, air transportation, cargo and logistics, energy and natural gas, financial markets, automobiles, and office equipment. The firm's extensive experience includes both cases in this District and other courts, including the Eastern District of Michigan, the Southern District of New York, the District of Delaware, and California state courts.

In 2008, CPM finalized a settlement of over \$200 million in *In re International Air Transportation Surcharge Antitrust Litig.*, an MDL class action challenging the price-fixing of air passenger ticket between the U.S. and the U.K. where CPM served as co-lead counsel. This case involved navigating the intersection of U.S. and U.K. antitrust law and CPM is one of the few firms with experience in addressing and resolving these complex issues. In 2003, CPM finalized a settlement of over \$100 million in *In re Methionine Antitrust Litig.*, Case No. 00-1311 CRB (N.D. Cal.), an antitrust class action involving a conspiracy to fix prices for methionine.

Outside of this district CPM has been appointed as lead counsel in many antitrust cases, including *In re Automotive Parts Antitrust Litig.*, MDL 2311 (E.D. Mich.) and *Precision Associates v. Panalpina ("Freight Forwarders")*, Case No. 08-0042 JG (E.D.N.Y.).

Lieff Cabraser likewise enjoys recognition for its successes in antitrust cases. In 2012, the Daily Journal selected Lieff Cabraser's antitrust practice group as one of the top five practice groups in California. Courts have appointed Lieff Cabraser as lead counsel in various antitrust cases in this District, including *Batteries*, *LCD*, *Norvir*, and *High-Tech*. Additionally, Lieff Cabraser served as counsel in *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, Case No. 4:09-cv-3329 CW (N.D. Cal.), which Lieff Cabraser helped bring to a successful judgment after a three-week bench trial.

Outside of this District, courts have appointed Lieff Cabraser to serve as class counsel in several antitrust cases, including *Titanium Dioxide*; *Marchbanks Truck Service, Inc. v. Ceridian*

Corp., Civil Action No. 07-cv-1128 (E.D. Pa.); *Sullivan v. DB Investments*, Case No. 04-02819 (D.N.J.); and *Natural Gas Antitrust Cases I-IV*, J.C.C.P. No. 4221 (Cal. Super. Ct.) (co-lead counsel in record \$1.5 billion settlement on behalf of California natural gas businesses and consumers).

In *Sullivan*, Lieff Cabraser obtained a \$295 million settlement for indirect purchaser plaintiffs.³ In this antitrust case against De Beers, plaintiffs alleged defendants monopolized the sale of rough diamonds. This is the only case in which the diamond monopolist has ever been held civilly accountable in a United States court.

Lieff Cabraser served as co-lead counsel in *Titanium Dioxide*, a direct purchaser action alleging price-fixing by titanium dioxide manufacturers and reached a settlement on the eve of trial. In total, Lieff Cabraser obtained \$165 million in settlements from the defendants in a case in which the DOJ did not investigate price-fixing by defendants.

D. CPM and Lieff Cabraser Will Continue to Commit More Than Ample Resources to Represent the First-Level Indirect Purchaser Plaintiffs (Fed. R. Civ. P. 23(g)(1)(A)(iv))

Moving Counsel have the necessary resources and are committed to prosecuting this action in the best interests of the indirect purchase plaintiff class. CPM and Lieff Cabraser are ably staffed with attorneys and support, including private investigators, accountants, and economists. These law firms' attorney and paralegal resources will ensure that the case will be staffed appropriately and efficiently so that senior attorneys are not performing junior attorney work, junior attorneys will work at their level and will not spend too much time on a task, and no attorneys will do any paralegal work. In successfully prosecuting class actions for the last four decades, these firms routinely advance the costs of litigation and have demonstrated an ability and willingness to dedicate their substantial resources to vigorously prosecute the claims of proposed class members. As reflected by the extensive time and funds it has already committed to this

³ The Third Circuit, in a precedential *en banc* opinion, affirmed this settlement. *See Sullivan v. DB Investments*, 667 F.3d 273 (3d Cir. 2011).

1 case, CPM and Lieff Cabraser are prepared to continue to commit the resources necessary to
2 effectively and vigorously prosecute this case to a successful conclusion.

3 It is routine in nationwide antitrust class actions, such as the present litigation, for the
4 court to appoint multiple co-lead class counsel, such as in *Batteries* and in *LCD*. This is
5 particularly true where, as here, the litigation involves complex antitrust claims. The proposed
6 structure will also help to insure that sufficient resources are marshaled for the effective
7 representation of the Class. The proposed leadership structure here is ideally suited to the
8 particular circumstances of this litigation, which will require a team of dedicated lawyers with
9 ample resources to prosecute this litigation against the multiple well-financed defendants in this
10 litigation, which are located in Asia and the United States.

11 **E. Appointment of Lead Counsel Based in this District Serves the Best Interests**
12 **of the Class**

13 Both CPM and Lieff Cabraser are headquartered in this District. As such, CPM and Lieff
14 Cabraser, as Interim Co-Lead Class Counsel, are in a superior position to any other firm in
15 managing the discovery in this litigation because the majority of the evidence in this case will be
16 located in this District, since several defendants have major facilities or lithium ion battery
17 business in or near the Northern District of California. Furthermore, Northern California is a
18 frequent destination for many of the key witnesses in this litigation, meaning that many of the
19 depositions of witnesses for the defendant will physically take place in the Northern District of
20 California.

21 Because CPM and Lieff Cabraser are based here, they can reduce costs, benefitting the
22 First-Level Indirect Purchaser plaintiff Class. The Class will not have to pay additional expenses
23 to fly lawyers in for meet and confer sessions, document review sessions, depositions and
24 hearings. CPM and Lieff Cabraser can handle almost all of the critical litigation expenses without
25 paying unnecessary travel expenses, expenses that would be unnecessarily borne by the class if
26 this Court approves a lead class counsel that is based outside this District.

27

28

Further, no other law firm or even combination of law firms can claim to surpass or even match the experience that CPM and Lieff Cabraser have in practicing before the federal courts of this District. CPM and Lieff Cabraser therefore also have superior knowledge and experience in federal practice before the courts of this District.

IV. CONCLUSION

For all the foregoing reasons, it is respectfully requested that the Court grant the Motion and approve the proposed leadership structure by naming CPM and Lieff Cabraser Interim Co-Lead Class Counsel for the Proposed First-Level Indirect Purchaser Class.

Dated: October 23, 2014

Respectfully submitted,

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